

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX**

****FILED**
18 AUG 2021
U.S. EPA - REGION IX**

IN THE MATTER OF:

Hawaiian Ice Company
1125 North Nimitz Highway
Honolulu, Hawaii 96817

Respondent

**Docket No.
CAA(112r)-09-2021-0063**

**CONSENT AGREEMENT
AND FINAL ORDER
40 C.F.R. §§ 22.13 and 22.18**

CONSENT AGREEMENT

A. PRELIMINARY STATEMENT

1. This is a civil administrative enforcement action instituted pursuant to Section 113(a)(3)(A) and (d) of the Clean Air Act (“CAA”), as amended, 42 U.S.C. § 7413(a)(3)(A) and (d), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (“Consolidated Rules”), 40 C.F.R. Part 22.
2. Complainant is the United States Environmental Protection Agency, Region IX (“EPA”).
3. Respondent is Hawaiian Ice Company (“Respondent”).
4. This Consent Agreement and Final Order (“CA/FO”), pursuant to 40 C.F.R. §§ 22.13 and 22.18, simultaneously commences and concludes this proceeding, wherein EPA alleges that Respondent violated Section 112(r) of the CAA, 42 U.S.C. § 7412(r).

B. GENERAL ALLEGATIONS

5. Respondent owns and operates a facility located at 1125 North Nimitz Highway, Honolulu, Hawaii 96817 (“Facility”). The Facility produces approximately 300 tons of crushed, cubed and block ice per day for retail, the fishing industry and special events on the island of Oahu. The ice is produced using an anhydrous ammonia refrigeration system.

6. On April 24, 2017, there was a release of anhydrous ammonia from the 6,500-pound ammonia refrigeration system at the Facility, which resulted in the evacuation of more than 100 people from nearby businesses and vessels. Emergency Medical Services personnel responded. Nine people were evaluated on site for irritated eyes, breathing difficulties and other symptoms, and one person transported himself to an area hospital for evaluation.

7. On July 10, 2018, EPA performed an inspection of the Facility pursuant to Section 112(r) of the CAA, 42 U.S.C. § 7412(r). Based upon the information gathered during this inspection and subsequent investigation, EPA determined that Respondent violated certain provisions of the General Duty Clause of the CAA, 42 U.S.C. § 7412(r)(1).

8. Pursuant to Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), owners and operators of stationary sources producing, processing, handling or storing substances listed pursuant to CAA Section 112(r)(3), 42 U.S.C. § 7412(r)(3), or any other extremely hazardous substance have a general duty in the same manner and to the same extent as section 654 of Title 29 to identify hazards which may result from such releases using appropriate hazard assessment techniques, to design and maintain a safe facility taking

such steps as are necessary to prevent releases, and to minimize the consequences of accidental releases which do occur.

9. Respondent is subject to the powers vested in the EPA Administrator by Section 113 of the CAA, 42 U.S.C. § 7413.

10. Section 113 of the CAA, 42 U.S.C. § 7413, authorizes EPA to assess civil penalties for any violation of Section 112(r) of the CAA, 42 U.S.C. § 7412(r).

11. The Administrator of EPA delegated the authority to sign consent agreements memorializing settlements of enforcement actions under the CAA to EPA Regional Administrators pursuant to delegation 7-6-A, dated August 4, 1994. The Regional Administrator, EPA Region IX, in turn, redelegated this authority with respect to enforcement of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), to the Director of the Enforcement Division, Region IX, pursuant to delegation R9-7-6-A, dated February 11, 2013.

12. In a letter dated November 3, 2020, the United States Department of Justice granted EPA a waiver from the condition on administrative actions specified in Section 113(d) of the CAA, 42 U.S.C. § 7413(d), that the first alleged date of violation occurred no more than one year before the initiation of the administrative action, to allow EPA to pursue certain administrative actions for violations of 40 C.F.R. Part 68, promulgated pursuant to Section 112(r) of the CAA, 42 U.S.C. § 7412(r). This administrative action falls within the scope of that waiver.

13. At all times relevant to this CA/FO, Respondent has been a “person” as defined by Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

14. At all times relevant to this CA/FO, the Facility has been a “stationary source” as defined by Section 112(r)(2)(C), 42 U.S.C. § 7412(r)(2)(C).

15. At all times relevant to this CA/FO, Respondent has been the “owner or operator” of the Facility for purposes of the CAA.

16. Anhydrous ammonia is a regulated substance listed under Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3).

17. At all times relevant to this CA/FO, Respondent has produced, processed, handled, or stored anhydrous ammonia, which is a regulated substance, within the meaning of the General Duty Clause, Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), at the Facility.

C. ALLEGED VIOLATIONS

COUNT 1

(Failure to Design and Maintain a Safe Facility – Labeling)

18. Paragraphs 1 through 17, above, are incorporated herein by this reference as if they were set forth here in their entirety.

19. Pursuant to the General Duty Clause, Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), owners and operators of stationary sources producing, processing, handling or storing regulated substances must design and maintain a safe facility, taking such steps as are necessary to prevent releases.

20. EPA determined the ammonia alarm light outside the ammonia machinery room (AMR) door was not properly labeled to indicate its purpose, and that there was no audible alarm outside the AMR, which EPA found to be inconsistent with industry safety standards.

21. EPA determined the AMR emergency remote ventilation switch was not labeled/clearly marked or identified by signage to indicate the purpose of the switch, which EPA found to be inconsistent with industry safety standards.

22. By failing to comply with the requirement to design and maintain a safe facility, taking such steps as are necessary to prevent releases, Respondent violated Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

COUNT 2

(Failure to Design and Maintain a Safe Facility – Equipment Related to Emergencies)

23. Paragraphs 1 through 17, above, are incorporated herein by this reference as if they were set forth here in their entirety.

24. Pursuant to the General Duty Clause, Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1), owners and operators of stationary sources producing, processing, handling or storing regulated substances must design and maintain a safe facility, taking such steps as are necessary to prevent releases.

25. EPA determined the ventilation system for the AMR exhausts directly into the high pressure receiver (HPR)/condenser area, and did not contain an ammonia detector or ammonia detection alarms outside of the exterior doors to the area. EPA found these conditions to be inconsistent with industry safety standards.

26. EPA determined the exterior doors from the AMR and the door from the condenser area were not tight-fitting, which EPA found to be inconsistent with industry safety standards.

27. EPA determined the AMR was open to the rest of the building above the first floor walls and was not sealed to prevent ammonia from escaping to other occupied parts of the building. The AMR contained one ammonia detector in the room and one ammonia sensor outside the AMR affixed to the wall in the attic space above the bin rooms. EPA determined this sensor may not detect ammonia that is released and escapes above the AMR. EPA determined that the walls, floor and ceiling separating the refrigeration room from other occupied spaces were not tight and of non-combustible construction, and did not consist of at least one-hour fire-resistive construction. EPA found these conditions to be inconsistent with industry safety standards.

28. EPA determined the large suction accumulator contains an oil drain line on the bottom of the vessel with a quarter-turn block valve that was not self-closing, and the line was not capped, presenting an ammonia release hazard if the valve is inadvertently opened, which EPA found to be inconsistent with industry safety standards.

29. By failing to comply with the requirement to design and maintain a safe facility, taking such steps as are necessary to prevent releases, Respondent violated Section 112(r)(1) of the CAA, 42 U.S.C. § 7412(r)(1).

D. CIVIL PENALTY

30. EPA proposes that Respondent be assessed, and Respondent agrees to pay, **EIGHTY-TWO THOUSAND SIX-HUNDRED THIRTEEN DOLLARS (\$82,613)** as the civil penalty for the violations alleged herein.

31. The proposed penalty was calculated in accordance with the “Combined Enforcement Policy for Clean Air Act Sections 112(r)(1), 112(r)(7), and 40 C.F.R.

Part 68,” dated June 2012, and was adjusted for inflation by the Federal Civil Penalties Inflation Adjustment Act, as amended, and the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19.

E. RESPONDENT’S ADMISSIONS

29. In accordance with 40 C.F.R. § 22.18(b)(2) and solely for the purpose of this proceeding, Respondent: (i) admits that EPA has jurisdiction over the subject matter of this CA/FO and over Respondent; (ii) neither admits nor denies the specific factual allegations and alleged violations contained in the CA/FO; (iii) consents to any and all conditions specified in this CA/FO and to the assessment of the civil administrative penalty under Section G of this CA/FO; (iv) waives any right to contest the allegations contained in Section C of the CA/FO; and (v) waives the right to appeal the proposed final order contained in this CA/FO.

F. PARTIES BOUND

30. This CA/FO shall apply to and be binding upon Respondent, and its successors and assigns, until such time as the civil penalty required under Section D (and any additional civil penalty required under Section H) have been paid, and any delays in performance and/or stipulated penalties have been resolved.

31. No change in ownership or legal status relating to the Facility will in any way alter Respondent’s obligations and responsibilities under this CA/FO.

32. Until all requirements of this CA/FO are satisfied, Respondent shall give notice of this CA/FO to any successor in interest prior to transfer of ownership or operation of the Facility and shall notify EPA within seven (7) days prior to such transfer.

33. The undersigned representative of Respondent hereby certifies that he or she is fully authorized by Respondent to enter into and execute this CA/FO, and to legally bind Respondent to it.

G. PAYMENT OF CIVIL PENALTY

34. Respondent consents to the assessment of and agrees to pay civil penalties of **EIGHTY-TWO THOUSAND SIX-HUNDRED THIRTEEN (\$82,613)** in settlement of the civil penalty claims made in this CA/FO.

35. Respondent shall pay the civil penalty within thirty (30) days of the Effective Date of this CA/FO, as established in Section K of this CAFO.

36. All payments shall indicate the name of the Facility, EPA Facility identifier (FRS 110070254488), the Respondent's name and address, and the appropriate EPA docket number of this action. Payment shall be made by corporate, certified, or cashier's checks payable to "Treasurer of the United States" and sent as follows:

Regular Mail:

U.S. Environmental Protection Agency
P.O. Box 979077
St. Louis, MO 63197-9000

Overnight Mail:

U.S. Environmental Protection Agency
Government Lock Box 979077
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101
Contact: Craig Steffen (513-487-2091)

Alternatively, payment may be made by electronic transfer as provided below:

Wire Transfers:

Wire transfers must be sent directly to the Federal Reserve Bank in New York City with the following information:

Federal Reserve Bank of New York

ABA = 021030004

Account = 68010727

SWIFT address = FRNYUS33

33 Liberty Street

New York, NY 10045

Field Tag 4200 of the Fedwire message should read “D 68010727 Environmental Protection Agency”

ACH (also known as REX or remittance express):

ACH payments to EPA can be made through the US Treasury using the following information:

US Treasury REX/Cashlink ACH Receiver

ABA: 051036706

Account Number: 310006

Environmental Protection Agency

CTX Format Transaction Code 22-checking

Physical Location of US Treasury Facility:

5700 Rivertech Court

Riverdale, MD 20737

Remittance Express (REX): 1-866-234-5681

Online Payment:

This payment option can be accessed from the information below:

www.pav.gov

Enter “**SFO 1.1**” in the search field

Open form and complete required fields

Respondent shall send a copy of each check, or notification that the payment has been made by one of the other methods listed above, including proof of the date payment was made, via electronic mail with a transmittal letter indicating Respondent’s name, the case title, and docket number, to both:

Regional Hearing Clerk (RC-1)
U.S. Environmental Protection Agency - Region IX
R9HearingClerk@epa.gov

and

Don Nixon
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency - Region IX
Nixon.Donald@epa.gov

37. Failure to send the civil penalty so that it is received by the due date will result in imposition of interest from the Effective Date of this CA/FO at the current interest rate published by the U.S. Treasury, as described at 40 C.F.R. §13.11. In addition, a six percent (6%) per annum penalty that will be assessed monthly will be applied on any principal amount not paid within ninety (90) days of the due date.

38. The penalties specified in this CA/FO shall represent civil penalties assessed by EPA and shall not be deducted by Respondent or any other person or entity for federal, state or local taxation purposes.

H. DELAY IN PERFORMANCE/STIPULATED PENALTIES

39. In the event Respondent fails to meet any requirement set forth in this CA/FO, Respondent shall pay stipulated penalties as follows: FIVE HUNDRED DOLLARS (\$500) per day for the first to fifteenth day of delay, ONE THOUSAND DOLLARS (\$1,000) per day for the sixteenth to thirtieth day of delay, and FIVE THOUSAND DOLLARS (\$5,000) per day for each day of delay thereafter. Compliance by Respondent shall include completion of any activity under this CA/FO in a manner acceptable to EPA and within the specified time schedules in and approved under this CA/FO.

40. Stipulated penalties shall begin to accrue on the day after performance is due and shall continue to accrue through the final day until performance is complete. Respondent shall pay stipulated penalties within fifteen (15) days of receipt of a written demand by Complainant for such penalties. Payment of stipulated penalties shall be made in accordance with the procedure set forth for payment of penalties in Section G of this CA/FO.

41. If a stipulated penalty is not paid in full, interest shall begin to accrue on the unpaid balance at the end of the fifteen-day period at the current rate published by the United States Treasury, as described at 40 C.F.R. §13.11. Complainant reserves the right to take any additional action, including but not limited to, the imposition of civil penalties, to enforce compliance with this CA/FO or with the CAA and its implementing regulations.

42. The payment of stipulated penalties specified in this Section shall not be deducted by Respondent or any other person or entity for federal, state or local taxation purposes.

43. Notwithstanding any other provision of this section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this CA/FO.

I. RESERVATION OF RIGHTS

44. Except as addressed in this CA/FO, EPA hereby reserves all of its statutory and regulatory powers, authorities, rights and remedies, both legal and equitable, including the right to require that Respondent perform tasks in addition to those required by this CA/FO. EPA further reserves all of its statutory and regulatory powers, authorities, rights and remedies, both legal and equitable, which may pertain to Respondent's failure to comply

with any of the requirements of this CA/FO, including without limitation, the assessment of penalties under the CAA or any other statutory, regulatory or common law enforcement authority of the United States. This CA/FO shall not be construed as a covenant not to sue, release, waiver or limitation of any rights, remedies, powers or authorities, civil or criminal, which EPA has under the CAA or any other statutory, regulatory or common law enforcement authority of the United States.

45. Compliance by Respondent with the terms of this CA/FO shall not relieve Respondent of its obligations to comply with the CAA or any other applicable local, state, tribal or federal laws and regulations. This CA/FO is not intended to be nor shall it be construed as a permit. This CA/FO does not relieve Respondent of any obligation to obtain and comply with any local, state, or federal permits nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, tribal, state or local permit.

46. The entry of this CA/FO and Respondent's consent to comply shall not limit or otherwise preclude EPA from taking additional enforcement actions should EPA determine that such actions are warranted except as it relates to those matters resolved by this CA/FO. Respondent's full compliance with this CAFO shall only resolve Respondent's liability for Federal civil penalties for the violations and facts alleged in this CA/FO.

47. EPA reserves its right to seek reimbursement from Respondent for such additional costs as may be incurred by the United States in the event of delay of performance as provided by this CA/FO.

J. MISCELLANEOUS

48. This CA/FO may be amended or modified only by written agreement executed by both EPA and Respondent.

49. The headings in this CA/FO are for convenience of reference only and shall not affect interpretation of this CA/FO.

50. Each party to this action shall bear its own costs and attorneys' fees.

51. Respondent consents to entry of this CA/FO without further notice.

K. EFFECTIVE DATE

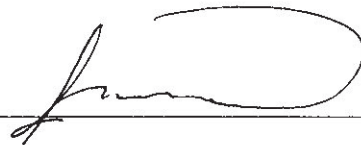
52. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CA/FO shall be effective on the date that the Final Order contained in this CA/FO, having been approved and issued by the Regional Judicial Officer, is filed with the Regional Hearing Clerk.

IT IS SO AGREED.

In the Matter of Hawaiian Ice Company
Consent Agreement and Final Order

Respondent Hawaiian Ice Company

DATE: 7/22/2021

BY: _____

Name: Kawika Delos Reyes
Title: General Manager

United States Environmental Protection Agency, Region IX

DATE: _____

AMY MILLER-
BOWEN

Digitally signed by AMY
MILLER-BOWEN
Date: 2021.08.09 08:55:21
-07'00'

BY: _____

Amy C. Miller-Bowen
Director
Enforcement and Compliance Assurance Division

FINAL ORDER

IT IS HEREBY ORDERED that this Consent Agreement and Final Order (“CA/FO”) pursuant to 40 C.F.R. Sections 22.13 and 22.18 in the Matter of Hawaiian Ice Company (Docket No. CAA(112r)-09-2021-0063) be entered and that Respondent shall pay a civil penalty of **EIGHTY-TWO THOUSAND SIX-HUNDRED THIRTEEN DOLLARS (\$82,613)**, due within thirty (30) days from the Effective Date of this CA/FO, in accordance with all terms and conditions of this CA/FO.

**STEVEN
JAWGIEL**

Digitally signed by STEVEN
JAWGIEL
Date: 2021.08.13 11:12:37
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Date

Steven L. Jawgiel
Regional Judicial Officer
U.S. EPA, Region IX

CERTIFICATE OF SERVICE

This is to certify that the original of the fully executed Consent Agreement and Final Order in the matter of Hawaiian Ice Company (**CAA112R-09-2021-0063**) was filed with the Regional Hearing Clerk and that a true and correct copy of the same was sent to the following parties by electronic mail:

FOR RESPONDENT: Kawika Delos Reyes, General Manager
Hawaiian Ice Company
1125 N. Nimitz Hwy, Honolulu, HI 96817
kawika@hawnice.com

and

Jeffrey Hunter
Perkins Coie LLP
1120 N.W. Couch Street, Tenth Floor
Portland, OR 97209-4128
JHunter@perkinscoie.com

FOR COMPLAINANT: Jon Owens
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region IX
Owens.Jon@epa.gov

and

Don Nixon
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region IX
Nixon.Donald@epa.gov

Steven Armsey
Regional Hearing Clerk

Date